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10/586,377	05/27/2008	Alf Ljosland	BER-103-PCT/US	2954
61215	7590	03/21/2011	EXAMINER	
DAVID I. ROCHE			VAN SELL, NATHAN	
BAKER & MCKENZIE LLP				
130 EAST RANDOLPH DRIVE			ART UNIT	
CHICAGO, IL 60601			PAPER NUMBER	
			1783	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,377

Applicant(s)

LJOSLAND ET AL.

Examiner

NATHAN VAN SELL

Art Unit

1783

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 14-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB/US)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, Claims 1-13, drawn to a panel in the reply filed on 2/18/2011 is acknowledged. The traversal is on the ground(s) that Beckett is not a floor panel, does not teach a floor panel, a device for interlocking a floor panel, or the aesthetic features of a floor panel. This is not found persuasive because the special technical feature of the amended claims was found in the prior art below.

The requirement is still deemed proper and is therefore made FINAL. Claims 14-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected method of making a panel and machine for fabricating a panel, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2/28/2011.

Claim Objections

Claim 13 is objected to because of the following informalities: "klicking" should be spelled "clicking". See Line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). See Line 2.

Regarding claim 13, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). See Line 2-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. (US 5,283,102) in view of Beckett (2,243,805).

Claim 1 is rejected because Sweet et al. discloses a flooring strip (20) (i.e., panel) comprising a decorative panel comprising a decorative layer with a decorative pattern (21), an intermediate layer (22) (i.e., support layer), and a bottom layer (23) (i.e., carrier layer) with the intermediate layer located between the bottom layer and the decorative layer. See Fig. 5 and the Abstract. Sweet et al discloses a tongue (15) and groove (16) arrangement with first and second upper edges on the opposite sides of the

panel. See Fig. 2. It appears these would act to limit up and down movement of the panels relative to adjacent panels.

Sweet fails to disclose the decorative layer can be at least partially absent such that a portion of the support layer is exposed.

Beckett discloses removing the top decorative layer exposing a portion of the support layer. See the Abstract, Fig.4, and Fig. 5. The motivation is to further enhance the decorative capability of the panel. See Page 2, Paragraph 3. Beckett is not explicitly disclosed as a floor panel, but it appears the decorative effects would work on a floor panel.

Therefore, it would be obvious to one ordinarily skilled in the art at the time of invention to combine the floor panel of Sweet et al. with the decorative pattern of Beckett for a floor panel with enhanced decorative capabilities.

Claim 2 is rejected because Beckett discloses the decorative layer (22) being absent at the edge (21 and 21b) of the panel. See Fig. 6. Furthermore, it would be obvious to one ordinarily skilled in the art at the time of invention that the intermediate edge portion (21) could be the support layer (12). See Fig. 6 and Fig. 4.

Claim 3 is rejected because Beckett discloses the decorative layer (22) being absent at the edge (21 and 21b) of the panel. It would be obvious to one ordinarily skilled in the art at the time of invention that it is inherent in the design of a groove and tongue connector system that the decorative layer will be absent the tongue connector (i.e., one edge) and present as the top layer above groove to insure continuity of the decorative layer. Furthermore, it would be obvious to one skilled in the art at the time of

invention the support layer could be present or absent at the tongue connector edge, either acting as the tongue connector or to reinforce the tongue connector of the base layer.

Claim 4 is rejected because Beckett discloses removing the top decorative layer in an area other than the edge of the panel. See the Abstract, Fig. 4 and Fig. 5.

Claim 5 is rejected because Beckett discloses the decorative layer (22) being absent in an area that is a strip (21 or 21b). See Fig. 6. The area absent the decorative layer runs along every side of the board in a strip formation. See Fig. 6. Furthermore, it would be inherent in the design of a tongue and groove panel that the decorative layer is absent the tongue, so it would not interfere with the connectivity of the tongue into the groove. Sweet et al. demonstrates the tongue (15) is a strip that runs along the length of the board. See Fig. 1 and Fig. 2.

Claim 6 is rejected because Sweet et al. discloses a panel with the decorative layer (11) and support layer (12) both absent in the same area. See left edge of Fig. 2.

Claim 11 is rejected because Sweet et al. discloses the carrier layer is made of wood. See Column 5, Lines 28-31.

Claim 12 is rejected because Sweet et al. discloses the area (25) absent the decorative layer would be a rectangular cross section. See Fig. 4. The top view of (25) would be a rectangle. See Fig. 4.

Claims 7,8,9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. in view of Beckett as applied to claim 1 above, and further in view of Ungar (US 6,440,538).

Sweet et al. as modified by Beckett teaches the flooring panel of Claim 1.

Sweet et al. as modified by Beckett fails to disclose an abrasive overlay over the decorative layer.

Ungar discloses a wear-resistant upper layer (i.e., abrasive overlay) over the decorative layer. See the Abstract. The benefit is abrasion resistance. See Column 2, Lines 25-26.

Therefore, it would be obvious to one ordinarily skilled in the art at the time of invention to combine the floor panel of Sweet et al. and Beckett with the wear-resistant layer of Ungar for a floor panel with improved abrasion resistance, so Claim 7 is rejected.

Claim 8 is rejected for the aforementioned reasons of Claim 7, and because Sweet et al. discloses a tongue (25) configuration where the decorative layer is absent. See Fig. 4. It would be obvious to one ordinarily skilled in the art at the time of invention this area would be used for connecting purpose, would not see regular stepping traffic, so it would not need to be treated with the wear resistant layer. Furthermore, treating it with the wear resistant layer might alter the mechanical tolerances needed to assure a smooth connection between the tongue and groove connections.

Claim 9 is rejected because Ungar discloses the decorative layer is a printed paper. See Column 6, Lines 64-65.

Claim 10 is rejected because Ungar discloses the decorative layer is a colored paper and is Kraft paper. See Column 6, Lines 64-65 and Column 9, Lines 15-20.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al. in view of Beckett as applied to Claim 1 above, and further in view of Tychsen (US 2003/0101681 A1)

Sweet et al. as modified by Beckett teaches the flooring panel of Claim 1.

Sweet as modified by Beckett fails to suggest a plurality of connection portions at the edges of the panel that connect by snapping, tilting, or clicking together. The tongue and groove connectors of Sweet et al. are basic and appear to just slide together. See Fig. 4.

Tychsen discloses a tongue and groove connector (8) that would connect by tilting or angling the panel into place with or without play. See Fig. 3. The benefit of the connector is to provide a secure connection between panels that cannot be unintentionally broken. See Page 1, Paragraph 8.

Therefore, it would be obvious to one ordinarily skilled in the art at the time of invention to combine the floor panel of Sweet et al. and Beckett with the secure connector of Tychsen for a floor panel with a secure connection that cannot be unintentionally broken.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NATHAN VAN SELL whose telephone number is

(571)270-5152. The examiner can normally be reached on Monday through Friday, 9am til 6:30pm, EST, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571)272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/
Supervisory Patent Examiner, Art Unit 1783

/N. V./
Examiner, Art Unit 1783